

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1943.

601

DAVID NOTES, RUFUS C. BROOKS, THOMAS L. JONES,
AND REGIS CANEVIN, BISHOP OF PITTSBURGH, AP-
PELLANTS,

vs.

HAROLD E. DOYLE,

AND

No. 1944.

JULIA A. STEARNS AND REGIS CANEVIN, BISHOP OF
PITTSBURGH, APPELLANTS,

vs.

HAROLD E. DOYLE.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 20, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

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In the Court of Appeals of the District of Columbia

No. 1943.

DAVID NOTES ET AL., Appellants,

vs.

HAROLD E. DOYLE,

and

No. 1944.

JULIA A. STEARNS ET AL., Appellants,

vs.

HAROLD E. DOYLE.

a Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES, RUFUS C. BROOKS and THOMAS L. JONES, and REGIS
CANEVIN, Bishop of Pittsburgh, Defendants,

and

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS and REGIS CANEVIN, Bishop of Pittsburgh.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled causes, to wit:

1

Declaration.

Filed Oct. 12, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES, RUFUS C. BROOKS, and THOMAS L. JONES, Defendants.

The plaintiff, Harold E. Doyle, sues the defendants, David Notes, Rufus C. Brooks and Thomas L. Jones, to recover possession of all that piece or parcel of land situate in the City of Washington, District of Columbia, and designated as the Eastern most part of original lot two (2) in Square four hundred and fifty-eight (458), said part of lot having a front of 20 feet on Louisiana Avenue, and running back with said width and with lines parallel with the Eastern line of said lot to North D Street, together with the improvements and appurtenances thereunto belonging, and all right, title, interest and estate in and to the said premises, which said described part of lot or tract of land the plaintiff claims to be the owner in fee simple and in severalty and entitled to immediate possession of the said premises, and of which he was heretofore on, to wit, the 3rd day of April, A. D. 1905, by said defendants dispossessed, and the said defendants, who are now in actual possession of the said premises, unlawfully and wrongfully entered thereon, and have unjustly and unlawfully, and still do unjustly and unlawfully detain the same from this plaintiff, and the plaintiff claims the right to the possession of the said described land and premises with the costs of this action.

Therefore this plaintiff demands possession of said Eastern most part of original lot two (2) in Square four hundred and fifty-eight (458), having a front of 20 feet on Louisiana Avenue and running back with said width and with lines parallel to the Eastern line of said lot to North D Street, in said City of Washington, District of Columbia, and for costs of this action.

2. The plaintiff, Harold E. Doyle, further sues the defendants, David Notes, Rufus C. Brooks and Thomas L. Jones, for money payable by the defendants to the plaintiff for that the defendants having as aforesaid dispossessed the plaintiff from the aforesaid premises on the third day of April, 1905, have from said day and date taken and received and still continue to take and receive rents, issues and profits thereof, and to use, occupy and enjoy the said premises to the damage of the plaintiff in the sum of Three thousand Dollars (\$3,000.00), which amount the plaintiff claims, besides costs of this suit.

HAMILTON & COLBERT,
Att'ys for Pl'ff.

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Notice to Plead.

The defendants are to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays occurring after the day of service hereof; otherwise judgment.

HAMILTON & COLBERT,
Att'ys for Pl'ff.

Plea.

Filed November 17, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES ET AL., Defendants.

Come now the defendants in the above-entitled case, by B. F. Leighton, Esq., their attorney, and for plea to plaintiff's declaration, say that they are not guilty, in manner and form, as alleged in said declaration.

B. F. LEIGHTON,
Attorney for Defendants.

4

Joinder of Issue.

Filed December 1, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES ET AL., Defendants.

Now comes the plaintiff in the above entitled cause and joins issue with the defendants on their plea filed herein.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

B. F. Leighton, Esq., Attorney for Defendants:

Please take notice that the issue joined in this cause will be tried at the next term of this court.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

5 *Motion of Regis Canevin to be Made Party Defendant.*

Filed December 18, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES ET AL., Defendants.

Comes now, Regis Canevin, Bishop of the diocese of Pittsburg, of the Roman Catholic Church, and moves the Court that he be made party defendant in the above-entitled cause, and permitted to defend the same with the defendants David Notes, Rufus C. Brooks and Thomas L. Jones, because he says that they are tenants of said mes-
suage and premises in said declaration described, and as such tenants hold under him, as such Bishop, as aforesaid, and that he is the owner of said property; and said plaintiff claims adversely to him.

B. F. LEIGHTON,

Attorney for Defendants and Bishop of Pittsburgh.

Please take notice that I will call the above motion to the attention of whichever Circuit Court to which said motion may be assigned, on Friday, December 22nd, 1905, at ten o'clock A. M., or as soon thereafter as counsel may be heard.

B. F. LEIGHTON,

Attorney for Defendants and Bishop of Pittsburgh.

6 To Messrs. Hamilton and Colbert, Attorneys for plaintiff.

We consent to the granting of this motion.

HAMILTON & COLBERT.

Memorandum.

On December 19, 1905, the motion of Regis Canevin, Bishop of Pittsburgh, was granted.

Plea of Regis Canevin, Bishop of Pittsburg.

Filed February 2, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES ET AL., Defendants.

Comes now, Regis Canevin, Bishop of Pittsburgh, one of the defendants in the above entitled cause, by B. F. Leighton, his attorney,

and for plea to plaintiff's declaration, says that he is not guilty in manner and form as alleged in said declaration.

B. F. LEIGHTON,
Attorney for Said Defendant.

7

Stipulation.

Filed April 25, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,
vs.
DAVID NOTES ET AL., Defendants,

and Consolidated with

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,
vs.
JULIA A. STEARNS, Defendant.

It is hereby agreed in the above entitled causes by the parties hereto through their respective attorneys that these causes may be heard together by the Court without a jury, upon the following agreed statement of facts:

Joseph M. Toner, deceased, died in the District of Columbia, in the month of July, 1896, that at the time of his death and previously thereto he was the owner in fee simple of the real estate claimed by the plaintiff in these causes. By his last will and testament duly executed, and now of record in the Office of the Register of Wills for this District, the said real estate was devised to and became the property of his brother, James L. Toner, in fee simple, and so remained until the death of the said James L. Toner, which took place on the

8 sixth day of January, at the town of Derry, in the County of Westmoreland, State of Pennsylvania, whereof he was a citizen and resident. After his acquisition of said real estate, to wit, on August 5th, 1896, the said James L. Toner executed at Cresson Springs, Cambria County, in the State of Pennsylvania, a paper writing purporting to be his last will and testament, duly acknowledged as such before three credible witnesses, whereby he devised the real estate in controversy to Martin F. Morris, one of the Justices of the Court of Appeals of the District of Columbia, who is named as executor of said last will and testament, upon certain trusts therein specified, and in and by his said last will and testament, he the said James L. Toner devised and bequeathed all the estate not derived from his said brother, which was principally in the State of Pennsylvania, to said Morris, in trust, for certain other purposes in

said last will and testament specified. This paper writing, purporting to be the last will and testament of the said James L. Toner, was to wit, on the 6th day of January, 1905, duly admitted to probate in this District. A certified copy thereof, marked Exhibit "A" is filed herewith, and is referred to and made part of this stipulation.

After the making of said will of August 5th, 1896, to wit, on the 28th day of October, A. D., 1897, the said James L. Toner executed in the State of Pennsylvania, another paper writing, purporting to be his last will and testament, duly attested by two credible witnesses, who subscribed their names thereto as such. James S. Moorhead, Esq., a competent witness, drew said will, and was present when it was executed, but did not sign the same as an attesting witness. He saw the said James L. Toner sign and seal said will, and John E. Kunkle and James E. Keenan subscribe their names thereto as attesting witnesses, in the presence of the said testator; that said will was executed under his direction and supervision; that such attestation was made as aforesaid, and was sufficient for all purposes in the State of Pennsylvania; that by said paper writing, testator attempted to revoke all previous wills and testaments by him at any time made, and specifically and by express designation, the will and testament aforesaid of August 5, 1896 and made other dispositions of his estate than those in the previous will mentioned; that thereafter, to wit, on the 2nd day of July, A. D. 1898, the said James L. Toner made a codicil to his said last will and testament bearing date as aforesaid on the 28th day of October, 1897, which codicil was attached to said will, whereby and wherein he declared and published said writing as a codicil to said will, leaving said will in all other respects remain as it was then written. Said codicil was duly signed and sealed by the said James L. Toner, and duly attested by James S. Moorehead, a credible witness; that thereafter, to wit, the 31st day of August, A. D. 1898, the said James L. Toner made a second codicil which he attached to said last will and testament bearing date as aforesaid on the 28th day of October 1897, whereby and wherein he declared that the testator named in said will dated October 28, 1897, and the codicil dated July 2, 1898, does hereby make,

ordain and publish this as a codicil to the same, leaving said will and codicil remain in all other respects as now written.

Said codicil was signed and sealed by the said James L. Toner and was duly attested by said James S. Moorehead and P. McGarvey, two credible witnesses. Said will and codicils thereto were, to wit, on the tenth day of January, 1899 proved and approved as the last will and testament of James L. Toner, deceased, before the Register of Wills, Westmoreland County, State of Pennsylvania, acting as a court, and having cognizance of such matters in and for said county in said State; and letters testamentary were on said tenth day of January of said year issued to James S. Moorhead, the executor named therein. A duly certified copy of said will and testament and the codicils thereto, and of said letters testamentary, marked "Exhibit "B," is attached hereto, and made part hereof, as though fully inserted in this agreement. Said will was proven and admitted to probate and record before S. C. Stevenson, a duly appointed and

qualified Register of Wills of the Register of Wills' Office, County of Westmoreland, State of Pennsylvania.

At the date of the death of the said James L. Toner, and the admission of said last will and codicils to probate, the laws of Pennsylvania provided that every Register of Wills, qualified to act as such, should have jurisdiction in the county of which he shall have been appointed, of the probate of wills and testaments, and the granting of letters testamentary and of administration. Said Register of Wills had other powers and duties not necessary to be herein particularized.

11 The public laws of the State of Pennsylvania touching the powers and duties of a Register of Wills may be cited and referred to by counsel for either of the parties to these causes, at the trial thereof, or on appeal.

The plaintiff has received a deed of conveyance of the property in controversy, from the said Martin F. Morris, acting as executor and trustee under the will of August 5th, 1896, executed after the death of the said James L. Toner, and Laura A. Toner, his wife, and claims the estate under said will. The defendants David Notes, Rufus C. Brooks, Thomas L. Jones and Julia A. Stearns, are tenants in occupation and possession of said property, holding the same from Regis Canevin, Bishop of the Diocese of Pittsburgh, of the Roman Catholic Church, who has intervened herein, and who claims to be entitled to said property, and to be the owner thereof under the second will and testament aforesaid of the said James L. Toner, bearing date the 28th day of October, 1897, and of the codicils thereto attached, bearing date on the 2d day of July, 1898, and the 31st day of August, 1898, respectively, and who holds the property in question under certain trusts not necessary to be set out herein.

It is agreed that if the court should be of the opinion that the plaintiff is not entitled to recover, on the above statement of facts, then judgment is to be entered for the defendants and intervenor; but if the court should be of opinion that plaintiff is entitled to recover, then judgment is to be entered for him in both cases.

12 It is further, agreed however, that upon the ruling of the court in the premises, either party may appeal to the Court of Appeals of the District of Columbia, and to the Supreme Court of the United States, it being hereby expressly agreed that the value of the property in controversy exceeds the sum of five thousand dollars.

Executed this 25th day of April, A. D. 1908.

JOSEPH J. DARLINGTON,
M. J. COLBERT,

Attorneys for Plaintiff.

B. F. LEIGHTON,

Attorney for Defendants.

I, James L. Toner, of Derry, in the County of Westmoreland, in the State of Pennsylvania, do make, declare, and publish this my last will and testament; and I do hereby give, devise, and bequeath my estate as follows:—

1. All the estate in the District of Columbia which I have derived from my deceased brother, Doctor Joseph M. Toner, I give, devise and bequeath to my Executor hereinafter named in trust to collect the rents and profits thereof and after the satisfaction of all due charges thereon to pay over the same to my wife Laura A. Toner for and during the term of her natural life; and upon her death to convert the said estate into money, if the same has not been previously so converted, and to divide the proceeds among such educational and charitable institutions in the District of Columbia as he may deem expedient, in accordance with the wishes of my said deceased brother.

2. All my own estate not derived from my said brother, and all the estate derived to me from him in the State of Pennsylvania, I give, devise, and bequeath to my said executor in fee simple in trust to collect the rents and profits thereof and the same, after the deduction of all proper charges, to pay over to my wife Laura A. Toner during the term of her natural life; and upon her death to convert the said estate into money, if the same has not been so previously converted, and out of the proceeds to pay to Mrs. Isabella Fisher, of Derry, in Westmoreland County aforesaid, the sum of One Thousand

14 Dollars, and to Mrs. Annie Sherer, of Greensburg, in said County, the sum of Five Hundred Dollars, and to Margaret McGarvey, of said Greensburg, the sum of Five Hundred Dollars; and all the rest and residue of said Estate to divide into two equal parts, one for the benefit of Saint Joseph's Roman Catholic Church, in the town of Derry or Derry Station, in said County, and to be applied to the payment of debts thereon, on condition that mass be said in said Church at least once in each year for the repose of the souls of my mother, my brother Joseph M. Toner and myself; and the other equal part to be given to Saint Vincent's Monastery, in the town of Latrobe, in the said County, upon the same condition.

3. I constitute and appoint Martin F. Morris, a Justice of the Court of Appeals of the District of Columbia, as the Executor of this my last will and testament, without bond.

In testimony whereof I have hereto set my hand and seal at Cresson Springs, in the County of Cambria, in the State of Pennsylvania, on the 5th day of August, A. D. 1896, revoking all previous wills by me made.

JAMES L. TONER. [SEAL.]

Signed, sealed, declared and published by the foregoing testator James L. Toner as and for his last will and testament in the presence of us who in his presence and at his request and in the presence of each other have hereto subscribed our names as witnesses:

ROBERT DEVEREAUX.

HELEN I. MORRIS.

MARY L. MORRIS.

15 Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original will of James L. Toner deceased, filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, aforesaid, and that the said will after having been duly proven, was, by order of the said Court, in accordance with the laws of the District of Columbia, admitted to probate and record on the 6th day of January A. D. one thousand nine hundred and five.

I further certify, That I have compared the foregoing copy of said will, with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 13th day of June, A. D. 1906.

[SEAL.]

WM. C. TAYLOR,
*Deputy Register of Wills for the District of
Columbia, Clerk of the Probate Court.*

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EXHIBIT "B."

Letters Testamentary.

WESTMORELAND COUNTY, ss:

The Commonwealth of Pennsylvania to James S. Moorhead, Greeting:

Know all men, That on the day of the date hereof, before me, Samuel C. Stevenson, Register for the probate of wills, and granting letters of administration, in and for said county, at Greensburg, was proved and approved the last will and testament of James L. Toner late of Derry Borough, in said County, deceased, (a true copy whereof is to these presents annexed) who, whilst living, and at the time of his death, to wit: on the 6th day of January, 1899, was possessed of divers goods, chattels, rights and credits within the said Commonwealth, by reason whereof and the laws and usages of this Commonwealth, the approbation and insinuation of said last will and testament, and the committing the administration of all and singular the goods, chattels, rights and credits, which were of said deceased, to me are manifestly known to belong: And that the administration of all and singular the goods, chattels, rights and credits of the deceased, in any way concerning his last will and testament, was committed to you, who are in the said testament named as Executor, and that you were first duly sworn well and truly to administer the goods, chattels, rights and credits of the deceased, according to law, and also,

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diligently and faithfully to regard and well and truly to comply with the provisions of the law relating to collateral in-

heritance. And that you are to make a true and perfect inventory of the goods, chattels, rights and credits aforesaid, and exhibit the same into the Register's Office at Greensburg, aforesaid, within one month, and to render a true and just account, calculation and reckoning of the said administration, to you committed as aforesaid, within one year from the day of the date hereof, and when thereto lawfully required.

In testimony whereof, I, the said Register, have hereunto set my hand and affixed the seal of said office, at Greensburg, aforesaid, the 10th day of January A. D. 1899.

[SEAL.]

S. C. STEVENSON, *Register.*

I, James L. Toner, of Derry Township, County of Westmoreland and State of Pennsylvania, being of sound mind, do make this my last will and testament, hereby revoking and annulling any will by me heretofore made, and especially revoking and annulling a former will executed by me and in the possession of Judge M. F. Morris of Washington, D. C.

First, I give, devise and bequeath, after the payment of all debts and expenses of my estate, all my estate of whatever kind and wherever situate to my beloved wife, Laura A. Toner, for and during her natural lifetime only, with the understanding that the said
18 estate shall be settled, controlled and managed by my executors hereinafter mentioned and that the net proceeds arising therefrom shall be paid over to her annually, or at other convenient periods.

Second, At the death of my said wife, I direct my executors or the survivor of them to pay to Mrs. Isabella Fisher, wife of George Fisher of Derry Station, the sum of Seven Thousand (\$7000.00) dollars, to be held by her in trust for her own personal use and comfort in part, and in part for the benefit of Edward Joseph Layton, son of her first husband, Frank Layton. She shall not be held accountable by the said Edward Joseph Layton for any part of the principal sum aforesaid, or for the income thereof, but any portion unused by her, at her death, shall belong to the said Edward Joseph Layton, and shall not be considered any part of her own estate.

Third: I give and bequeath to Mrs. Annie Shearer, wife of John Shearer of Greensburg, Pa., the sum of One thousand (\$1000.00) dollars.

Fourth: I give and bequeath to Margaret McGarvey, now of the same place, the sum of One thousand (\$1000.00) dollars.

Fifth: I give and bequeath to Toner Roy, my namesake and youngest son of Gill Roy, the sum of One hundred (\$100.00) dollars and my silver watch and chain.

Sixth: I give and bequeath to St. Joseph's Catholic Church of Derry Station, Westmoreland County, Pennsylvania, the sum
19 of Three Thousand (\$3000.00) dollars, to be applied to the payment of its present indebtedness, but if said indebtedness should be paid before this legacy shall vest, then to be applied to any other purpose by the said St. Joseph's Catholic Church.

Seventh: At the time of my wife's death, I desire that my household furniture shall be divided among Isabella Fisher, Annie

Shearer and Margaret McGarvey, above mentioned, without sale. They shall go to the premises and make an amicable division of the same, as I feel confident they can do this in a friendly way without the assistance of any other person. I except from this bequest my stair-clock and a book of steel engravings of the Works of Shakspeare, which I give to L. R. Hartley of Tarentum, Allegheny County, Penn'a, and my library which I give to the Benedictine Society and which will pass under the residuary clause of this my last will and testament.

Eighth: If I shall not have provided a Monument, during my lifetime, to mark my grave and the graves of my relatives herein-after mentioned, I hereby authorize and direct my executors or the survivor of them to erect out of the funds of my estate a proper monument consisting of a base and shaft of durable material and sufficiently large to contain the inscriptions of the names of the following persons: Ann Kelly, my mother, Elizabeth Toner, my sister, Dr. Joseph M. Toner, my brother, Laura A. Toner, my wife, and myself, the cost thereof to approximate but not to exceed Two thousand (\$2000.00) dollars.

20 I direct that this shall be done in the lifetime of my wife, if she shall survive me, except that the inscription of her name shall be made after her death.

Ninth: I will and desire that masses shall be held and performed by the St. Joseph's Catholic Church of Derry Station, annually, on the anniversaries of the death of my mother Ann Kelly, and my brother, my wife (and myself) above mentioned, and my sister, Elizabeth.

Tenth: All the residue and remainder of my estate of every kind and wherever situated, I give, devise and bequeath to The Benedictine Society of the Catholic Church in America. One portion of said residuary estate will consist of my farm near Derry, Westmoreland County, Pennsylvania, adjoining lands of Peter Loucks, Daniel Kist and Heirs of John Toner, containing one hundred (100) acres, more or less, and upon it I direct that the said Benedictine Society shall erect and set up suitable buildings and establish a school of an industrial character for the training and education of boys, to qualify them to perform skilled manual and clerical labor. This school shall be known as The Toner Institute and shall be under the management of said Society and I confide in the judgment and discretion of the said Society in all respects, in regard to the admission of pupils to said schools and the terms of such admission, only desiring that the other portion of my residuary estate shall be used, along with other funds if any can be obtained, in the erection of suitable buildings and in the proper equipment of said school.

21 If this gift shall be accepted by said Society, then I desire that masses shall be celebrated annually on the anniversaries of the deaths of my father, Meredith Toner, and my mother, brother and wife all above mentioned and myself, and my sister Elizabeth.

Eleventh: I hereby authorize and empower my executors herein-after named, during the lifetime of my said wife, to sell and convey any portion of my real estate, except the farm above mentioned,

either at private or public sale, and to execute and deliver to the purchaser or purchasers good and sufficient deeds in fee simple for the same, upon such terms and at such times as they may deem most advantageous for my estate. This power and authority are to embrace not only any land or real estate in Pennsylvania, but also all my real estate in Washington, D. C., or elsewhere. If the said real estate should not be sold in the lifetime of my said wife and the proceeds thereof should not be needed to pay the general legacies above mentioned, or the expenses and costs connected with the settlement of my estate, then I direct that such unsold real estate shall pass to the said Society to be held, used and sold by it or its successors and assigns as it may deem best. If necessary to sell said real estate or any part thereof to carry out the provisions of this will, in regard to legacies and expenses, after the death of my wife, then the authority to sell and convey above given to continue in and extend to the surviving executor.

Twelfth: I hereby nominate and appoint my wife Laura A. Toner to be the executrix and James S. Moorhead of Greensburg, Penn'a, to be the executor of this my last will and testament.

In testimony whereof, I have hereunto set my hand and seal this 28th day of October A. D. 1897.

JAMES L. TONER. [SEAL.]

Signed, sealed and delivered by the above named testator, James L. Toner, as and for his last will and testament, in our presence who have subscribed our names as witnesses hereto in his presence and in the presence of each other.

JOHN E. KUNKLE.
JAMES E. KEENAN.

Codicil to the Last Will and Testament of James L. Toner, and Thereto Attached.

I, James L. Toner, the testator named in the foregoing will, dated 28th October 1897, do hereby make, ordain and publish this as a codicil to the same, leaving the said will, in all other respects, remain as it is now written.

First: I give and bequeath to Margaret McGarvey the sum of Four thousand dollars (\$4000.00) in addition to what I have given her in the Fourth paragraph of said will, also my gold watch and chain.

Second: I hereby declare that it is my intention that the bequest to Isabella Fisher shall be Five Thousand dollars (\$5000.00) instead of seven Thousand dollars (\$7000.00) as mentioned in the Second paragraph of said will. The manner in which the said sum shall be held, used and enjoyed to be the same as recited in said paragraph.

23 Third: In case the Benedictine Society of the Catholic Church shall not accept the bequest and devise mentioned in the Tenth paragraph of my said will, then the same is given, be-

queathed and devised to the Catholic Diocese of Pittsburg for the same purpose as mentioned therein and no other.

Fourth: As to the household furniture mentioned in the Seventh paragraph, which is understood to embrace dishes and silver-ware, and which, it was provided, should be divided among Isabella Fisher, Annie Shearer and Margaret McGarvey, I now desire that the same shall be shares by them along with my sisters-in-law, Jane Hartley Cochrane of New York and Elizabeth Hartley of Tarentum, Pennsylvania.

In witness whereof, I have hereunto set my hand and seal this 2nd day of July A. D. 1898.

JAMES L. TONER. [SEAL.]

Attest:

JAS. S. MOORHEAD.

Second Codicil to the Last Will and Testament of James L. Toner and to Said Will and First Codicil Attached.

I, James L. Toner, the testator named in the foregoing Will dated 28th October 1897, and Codicil dated 2nd July 1898, do hereby make, ordain and publish this as a codicil to the same, leaving the said will and former codicil, in all other respects remain as now written.

24 First: To Edward Joseph Layton, already mentioned in the second paragraph of said Will, I give and bequeath the sum of One thousand (\$1000.00) dollars, absolutely in addition to the provisions made by me for him in the said second paragraph of said Will.

Second: To Pauline, the youngest daughter of Joseph W. Toner of Derry Borough, I give and bequeath the sum of One hundred (\$100.00) dollars, and my executor is hereby authorized to pay the same to her father for her use, and having so done shall be discharged from all liability therefor.

Third: I hereby revoke that part of paragraph Fifth in said will which gives my silver watch and chain to Toner Roy, but leaving the other legacy of One hundred (\$100.00) remain to him, and I direct my executor to pay said legacy to his father for the legatee's use, and by so doing to be discharged from all liability therefor.

In witness whereof, I have hereunto set my hand and seal this 31st day of August A. D. 1898.

JAMES L. TONER. [SEAL.]

Attest:

JAM. S. MOORHEAD.
M. McGARVEY.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Register's office, at Greensburg, in and for said County, the 10th day of January A. D. 1899.

[SEAL.]

S. C. STEVENSON, *Register.*

FRIDAY, *May 29th*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

No. 48025. At Law.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES, RUFUS C. BROOKS, and THOMAS L. JONES; REGIS
CANEVIN, Bishop of Pittsburgh, Def'ts.

The parties to this cause having heretofore agreed, by stipulation filed in this cause that it be consolidated with cause number 48026 at Law, and that said causes may be heard by the Court without a jury upon the agreed statement of facts filed in said causes, and heretofore argued by attorneys for the respective parties, and submitted to the Court, it is considered and adjudged that the plaintiff herein recover of defendants herein possession of all that piece or parcel of land situate in the City of Washington, District of Columbia, and designated as the Eastern most part of original lot two (2) in Square four hundred and fifty-eight (458), said part of lot having a front of 20 feet on Louisiana Avenue, and running back with said width and with lines parallel with the Eastern line of said lot to North D Street, together with the improvements and appurtenances thereto belonging, together with costs of suit to be taxed by the Clerk and have execution thereof.

TUESDAY, *June 2nd*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * *

At Law. No. 48025.

HAROLD E. DOYLE, Plaintiff,

vs.

DAVID NOTES ET AL., Def'ts.

Come now the defendants by their attorneys Mr. B. F. Leighton, in open Court, and notes an appeal to the Court of Appeals, whereupon the penalty of a bond for costs is fixed in the penalty of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars in the Registry of the Court in lieu of such bond.

Memorandum.

1908, June 15.—Appeal bond filed, 11

27

Stipulation.

Filed June 16, 1908.

In the Supreme Court of the District of Columbia.

No. 48025. At Law.

HAROLD E. DOYLE

vs.

DAVID NOTES ET AL.

No. 28026. At Law.

HAROLD E. DOYLE

vs.

JULIA A. STEARNS.

It is hereby stipulated between counsel that B. Francis Saul, who has been collecting rents from the real estate involved in the above causes and holding the same to abide the results of the suits, shall continue to do so until final judgment by the court of last resort to which the same shall be taken has been rendered, and that he shall then account to the successful party for the said rents, with liberty in the meantime to pay taxes, insurance charges, necessary repairs and any other needful expense. It is further agreed that the defendants in the above causes may take an appeal to the Court of Appeals, and then, if they shall see fit, to the Supreme Court of the United States, from the judgment lately rendered in the said causes in favor of the plaintiff, giving a cost bond, only, and that the said bond shall have all the effect, except as hereinabove provided, as if a supersedeas bond had been given.

M. J. COLBERT,
J. J. DARLINGTON,
Att'ys for Plaintiff.
B. F. LEIGHTON,
Att'y for Defendants.

28

Declaration.

Filed October 12, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS, Defendant.

The plaintiff, Harold E. Doyle, sues the defendant, Julia A. Stearns, to recover possession of all that piece or parcel of land situate

in the City of Washington, District of Columbia, and designated as lot ninety-seven (97) according to the subdivision made by Mary H. C. Baird and others, in Square two hundred and twelve (212), as said subdivision appears of record in the Office of the Surveyor of the District of Columbia in Book 10 at page 15, together with the improvements and appurtenances thereunto belonging, and all right, title, interest and estate in and to the said premises, which said described lot or tract of land this plaintiff claims to be the owner in fee simple and in severalty, and entitled to immediate possession thereof, and of which he was on, to wit, the 3rd day of April, A. D. 1905, by said defendant heretofore, on, to wit, the 3rd day of April, A. D. 1905, by said defendant dispossessed, and the said defendant, who is now in actual possession of the said premises, unlawfully and wrongfully, and still does unjustly and unlawfully detain the same from this plaintiff, and this plaintiff claims the right to possession of the said described land and premises, with the costs of this
29 action.

Therefore the plaintiff demands possession of said lot ninety-seven (97) according to the subdivision made by Mary H. C. Baird and others in Square No. two hundred and twelve (212) as said subdivision appears of record in the Office of the Surveyor of the District of Columbia, in Book 10 at page 15, and for costs of this action.

2. And the plaintiff, Harold E. Doyle, further sues the defendant, Julia A. Stearns, for money payable by the defendant to the plaintiff for that the defendant having as aforesaid dispossessed the plaintiff from the aforesaid premises on the third day of April, 1905, has from said day and date taken and received and still continues to take and receive rents, issues and profits thereof, and to use, occupy and enjoy the said premises to the damage of the plaintiff in the sum of Five thousand Dollars (\$5,000.00), which amount the plaintiff claims, besides costs of this suit.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays occurring after the day of service hereof; otherwise judgment.

HAMILTON & COLBERT,
Att'ys for Pl'ff.

30

Plea.

Filed December 5, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS, Defendant.

Now comes the defendant, by B. F. Leighton, Esq., her attorney, and for plea to plaintiff's declaration, says that she is not guilty, in manner and form as alleged in said declaration.

B. F. LEIGHTON,

*Attorney for Defendant.**Joinder of Issue and Notice of Trial.*

Filed December 7, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS, Defendant.

Now comes the plaintiff and joins issue on the defendant's plea in the above entitled cause.

HAMILTON & COLBERT,

Attorneys for Plaintiff.

31 B. F. Leighton, Esq., Attorney for Defendant:

Please take notice that the issue joined in the above entitled cause will be tried at the next term of the court.

HAMILTON & COLBERT,

*Attorneys for Plaintiff.**Motion of Regis Canevin to be Made a Party.*

Filed December 18, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS.

Comes now Regis Canevin, Bishop of the diocese of Pittsburgh of the Roman Catholic Church, and moves the Court that he be made

party defendant in the above entitled cause, and permitted to defend the same with the said defendant Julia A. Stearns; because he says that she is the tenant of said messuage and premises in said declaration described, and as such tenant holds under him, as such Bishop, as aforesaid, who is the owner of said property, and that said plaintiff claims adversely to him.

B. F. LEIGHTON,
Attorney for Defendant, and
Regis Canevin, Bishop of Pittsburgh.

32 Please take notice that I will call the above motion to the attention of whichever Circuit Court to which said motion may be assigned, on Friday, December 22nd, 1905, at ten o'clock A. M., or as soon thereafter as counsel may be heard.

B. F. LEIGHTON,
Attorney for Defendant, and
Regis Canevin, Bishop of Pittsburgh.

To Messrs. Hamilton and Colbert, Attorneys for Plaintiff.

We consent to the granting of above motion.

HAMILTON & COLBERT.

Memorandum.

On December 19, 1905, the motion of Regis Canevin, Bishop of Pittsburgh, was granted.

Plea of Regis Canevin, Bishop of Pittsburgh.

Filed February 2, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,
vs.

JULIA A. STEARNS ET AL., Defendants.

33 Comes now, Regis Canevin, Bishop of Pittsburgh, one of the defendants in the above entitled cause, by B. F. Leighton, Esq., his attorney, and for plea to plaintiff's declaration says that he is not guilty in manner and form as alleged in said declaration.

B. F. LEIGHTON,
Attorney for said Defendant.

Supreme Court of the District of Columbia.

FRIDAY, *May 29th*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * * *

No. 48026. At Law.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS, and REGIS CANEVIN, Bishop of Pittsburgh,
Defendants.

The parties hereto having heretofore by stipulation filed in this cause agreed that it be consolidated with cause numbered 48025 at Law, and that said causes may be tried by the Court without a jury, upon the agreed statement of facts filed in said causes and heretofore argued by the attorneys for the respective parties, and submitted to the court; it is considered and adjudged that the plaintiff herein recover of defendants herein possession of all that piece or parcel of land situate in the City of Washington, District of Columbia, 34 designated as lot ninety-seven (97) according to the subdivision made by Mary H. C. Baird and others, in Square two Hundred and twelve (212), as said subdivision appears of record in the office of the Surveyor of the District of Columbia, in Book 10 at page 15, together with the improvements and appurtenances thereto belonging and costs of suit to be taxed by the Clerk, and have execution thereof.

TUESDAY, *June 2nd*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * * *

At Law. No. 48026.

HAROLD E. DOYLE, Plaintiff,

vs.

JULIA A. STEARNS, Defendant.

Comes now the defendant by her Attorney Mr. B. F. Leighton, in open court, and notes an appeal to the Court of Appeals, whereupon the penalty of a bond for costs is fixed in the penalty of One Hundred Dollars, with leave to deposit the sum of Fifty Dollars in the Registry of the Court, in lieu of such bond.

Memorandum.

1908, June 15.—Appeal bond filed.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 34, both inclusive, to be a true and correct transcript of the record according to Rule No. Five of the Court of Appeals of the District of Columbia, wherein Harold E. Doyle is plaintiff and David Notes, *et als.*, are defendants, in cause No. 48025 At Law; and Harold E. Doyle is plaintiff and Julia A. Stearns *et al.*, are defendants, in cause No. 48026 at Law; as the same remain upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 19th day of August, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Ass't Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1943. David Notes, *et al.*, appellants, *vs* Harold E. Doyle, and No. 1944, Julia A. Stearns, *et al.*, appellants, *vs* Harold E. Doyle. Court of Appeals, District of Columbia. Filed Aug. 20, 1908. Henry W. Hodges, clerk.

